

**Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS
AND PROFESSIONAL REGISTRATION
Division 400—Life, Annuities and Health
Chapter 5—Advertising and Material Disclosures**

PROPOSED RULE

20 CSR 400-5.310 Deceptive or Unfair Military Sales Practices.

PURPOSE: This rule describes specific acts and practices that constitute deceptive or unfair trade practices and is based upon the Military Sales Practices Model Regulation adopted by the NAIC during July 2007. The specific prohibitions are not intended to be an all-inclusive list of conduct which might violate Sections 375.144 or 375.934, RSMo, but rather provide clear notice to insurers and insurance producers of conduct that would constitute a deceptive or unfair trade practice.

(1) Unfair Trade Practices on a Military Installation.

(A) Untrue, Deceptive or Misleading Representations. The following acts or practices in connection with the solicitation, offer to sell or sale to a service member when committed on a military installation by an insurer or insurance producer with respect to the in-person, face-to-face solicitation of life insurance constitute a deceptive sales practice under section 375.144, RSMo or an unfair trade practice under section 375.936(4), RSMo:

- 1. Knowingly soliciting the purchase of any life insurance product “door to door” or without first establishing a specific appointment for each meeting with the prospective purchaser;**
- 2. Soliciting service members in a group or “mass” audience or in a “captive” audience where attendance is not voluntary;**
- 3. Knowingly making appointments with or soliciting service members during their normally scheduled duty hours;**
- 4. Making appointments with or soliciting service members in barracks, day rooms, unit areas, or transient personnel housing or other areas where the installation commander has prohibited solicitation;**
- 5. Soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander’s designee;**
- 6. Posting unauthorized bulletins, notices or advertisements;**
- 7. Failing to present DD Form 2885, *Personal Commercial Solicitation Evaluation*, to service members solicited or encouraging service members solicited not to complete or submit a DD Form 2885; or**
- 8. Knowingly accepting an application for life insurance or issuing a policy of life insurance on the life of an enlisted member of the United States Armed Forces without first obtaining for the insurer’s files a completed copy of any required form which confirms that the applicant has received counseling or fulfilled any other similar requirement for the sale of life insurance established by regulations, directives or rules of the DoD or any branch of the Armed Forces.**

(B) Rebate or other Consideration or Inducement not in Contract. The following acts or practices in connection with the solicitation, offer to sell or sale to a service member when committed on a military installation by an insurer or insurance producer constitute unfair trade practices under section 375.936(9), RSMo:

- 1. Using DoD personnel, directly or indirectly, as a representative or agent in any official or business capacity with or without compensation with respect to the solicitation or sale of life insurance to service members; or**
- 2. Using an insurance producer to participate in any United States Armed Forces sponsored education or orientation program.**

(2) Unfair Trade Practices Regardless of Location.

(A) Untrue, Deceptive or Misleading Representations Concerning Banking. The following acts or practices in connection with the solicitation, offer to sell or sale to a service member constitute a

deceptive sales practice under section 375.144, RSMo or an unfair trade practice under section 375.936(4), RSMo:

1. Submitting, processing or assisting in the submission or processing of any allotment form or similar device used by the United States Armed Forces to direct a service member's pay to a third party for the purchase of life insurance. The foregoing includes, but is not limited to, using or assisting in using a service member's "MyPay" account or other similar internet or electronic medium for such purposes. This subsection does not prohibit assisting a service member by providing insurer or premium information necessary to complete any allotment form;

2. Knowingly receiving funds from a service member for the payment of premium from a depository institution with which the service member has no formal banking relationship. For purposes of this section, a formal banking relationship is established when the depository institution:

- A. provides the service member a deposit agreement and periodic statements and makes the disclosures required by the Truth in Savings Act, 12 U.S.C. § 4301 *et seq.* and the regulations promulgated thereunder; and

- B. permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums;

3. Employing any device or method or entering into any agreement whereby funds received from a service member by allotment for the payment of insurance premiums are identified on the service member's Leave and Earnings Statement or equivalent or successor form as "Savings" or "Checking" and where the service member has no formal banking relationship as defined in subsection (2)(A)2; or

4. Entering into any agreement with a depository institution for the purpose of receiving funds from a service member whereby the depository institution, with or without compensation, agrees to accept direct deposits from a service member with whom it has no formal banking relationship as defined in subsection (2)(A)2;

(B) Rebate or other Consideration or Inducement not in Contract. The following acts or practices in connection with the solicitation, offer to sell or sale to a service member constitute a deceptive sales practice under section 375.144, RSMo or an unfair trade practice under section 375.936(9), RSMo:

1. Using DoD personnel, directly or indirectly, as a representative or agent in any official or unofficial capacity with or without compensation with respect to the solicitation or sale of life insurance to service members who are junior in rank or grade, or to the family members of such personnel;

2. Offering or giving anything of value, directly or indirectly, to DoD personnel to procure their assistance in encouraging, assisting or facilitating the solicitation or sale of life insurance to another service member;

3. Knowingly offering or giving anything of value to a service member with a pay grade of E-4 or below for his or her attendance to any event where an application for life insurance is solicited; or

4. Advising a service member with a pay grade of E-4 or below to change his or her income tax withholding or state of legal residence for the sole purpose of increasing disposable income to purchase life insurance.

(C) Untrue, Deceptive or Misleading Representations Concerning Source, Sponsorship, Approval or Affiliation. The following acts or practices in connection with the solicitation, offer to sell or sale to a service member constitute a deceptive sales practice under section 375.144, RSMo or an unfair trade practice under section 375.936(4), RSMo:

1. Making any representation, or using any device, title, descriptive name or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance producer or product offered is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government, the United States Armed Forces, or any state or federal agency or government entity. Examples of prohibited insurance producer titles include, but are not limited to, "Battalion Insurance Counselor," "Unit Insurance Advisor," "Servicemen's Group Life Insurance Conversion Consultant" or "Veteran's Benefits Counselor"; Nothing herein shall be construed to prohibit a person from using a professional designation awarded after the successful completion of a course of instruction in the business of insurance by an

accredited institution of higher learning. Such designations include, but are not limited to, Chartered Life Underwriter (CLU), Chartered Financial Consultant (ChFC), Certified Financial Planner (CFP), Master of Science In Financial Services (MSFS), or Masters of Science Financial Planning (MS); or

2. Soliciting the purchase of any life insurance product through the use of or in conjunction with any third party organization that promotes the welfare of or assists members of the United States Armed Forces in a manner that has the tendency or capacity to confuse or mislead a service member into believing that either the insurer, insurance producer or insurance product is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government, or the United States Armed Forces.

(D) Untrue, Deceptive or Misleading Representations Concerning Premiums, Costs or Investment Returns. The following acts or practices in connection with the solicitation, offer to sell or sale to a service member constitute a deceptive sales practice under section 375.144, RSMo or an unfair trade practice under section 375.936(4), RSMo:

1. Using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid; or

2. Excluding individually issued annuities, misrepresenting the mortality costs of a life insurance product, including stating or implying that the product "costs nothing" or is "free."

(E) Untrue, Deceptive or Misleading Representations Concerning SGLI or VGLI. The following acts or practices in connection with the solicitation, offer to sell or sale to a service member constitute a deceptive sales practice under section 375.144, RSMo or an unfair trade practice under section 375.936(4), RSMo:

1. Making any representation regarding the availability, suitability, amount, cost, exclusions or limitations to coverage provided to a service member or dependents by SGLI or VGLI, which is false, misleading or deceptive;

2. Making any representation regarding conversion requirements, including the costs of coverage, or exclusions or limitations to coverage of SGLI or VGLI to private insurers which is false, misleading or deceptive; or

3. Suggesting, recommending or encouraging a service member to cancel or terminate his or her SGLI policy or issuing a life insurance policy which replaces an existing SGLI policy unless the replacement shall take effect upon or after the service member's separation from the United States Armed Forces.

(F) Omission of Material Disclosures. The following acts or practices in connection with the solicitation, offer to sell or sale to a service member constitute a deceptive sales practice under section 375.144, RSMo or an unfair trade practice under section 375.936(4), RSMo:

1. Deploying, using or contracting for any lead generating materials designed exclusively for use with service members that do not clearly and conspicuously disclose that the recipient will be contacted by an insurance producer, if that is the case, for the purpose of soliciting the purchase of life insurance;

2. Failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser;

3. Excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance;

4. Failing to make, at the time of sale or offer to an individual known to be a service member, the written disclosures required by Section 10 of the "Military Personnel Financial Services Protection Act," Pub. L. No. 109-290, p.16; or

5. Excluding individually issued annuities, when the sale is conducted in-person face-to-face with an individual known to be a service member, failing to provide the applicant at the time the application is taken:

A. an explanation of any free look period with instructions on how to cancel if a policy is issued; and

B. either a copy of the application or a written disclosure. The copy of the application or the written disclosure shall clearly and concisely set out the type of life insurance, the death benefit

applied for and its expected first year cost. A basic illustration that meets the requirements of sections 375.1500 to 375.1527, RSMo shall be deemed sufficient to meet this requirement for a written disclosure.

(G) **Omission of Facts Concerning Suitability.** The following acts or practices in connection with the solicitation, offer to sell or sale to a service member constitute a deceptive sales practice under section 375.144, RSMo or an unfair trade practice under section 375.936(4), RSMo:

1. Excluding individually issued annuities, recommending the purchase of any life insurance product which includes a side fund to a service member in pay grades E-4 and below unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable;

2. Offering for sale or selling a life insurance product which includes a side fund to a service member in pay grades E-4 and below who is currently enrolled in SGLI, is presumed unsuitable unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance;

3. Excluding individually issued annuities, offering for sale or selling any life insurance contract which includes a side fund:

A. unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty;

B. unless the applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined product. For this disclosure, the effective rate of return will consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage. This schedule will be provided for at least each policy year from one (1) to ten (10) and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration; and

C. which by default diverts or transfers funds accumulated in the side fund to pay, reduce or offset any premiums due;

4. Excluding individually issued annuities, offering for sale or selling any life insurance contract which after considering all policy benefits, including but not limited to endowment, return of premium or persistency, does not comply with standard nonforfeiture law for life insurance; or

5. Selling any life insurance product to an individual known to be a service member that excludes coverage if the insured's death is related to war, declared or undeclared, or any act related to military service except for an accidental death coverage, *e.g.*, double indemnity, which may be excluded.

AUTHORITY: sections 374.045, RSMo (2000), 375.144 RSMo (Cum. Supp. 2006), 375.934, RSMo (2000) and 375.936, RSMo (2000).

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed amendment at 10:00 a.m. on January 22, 2007 at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed amendment, until 5:00 p.m. on January 22, 2007. Written statements shall be sent to Mary S. Erickson, Department of Insurance, Financial Institutions and Professional Registration, P.O. Box 690, Jefferson City, Missouri 65102.

SPECIAL NEEDS: If you have any special needs addressed by the Americans with Disabilities Act, please notify us at (573) 751-6798 or (573) 751-2619 at least five working days prior to the hearing.